

CALCUTTA HIGH COURT

Emperor

Vs

Abdul Sheikh

(Sharfuddin and Chapman, JJ.)

09.07.1915

JUDGMENT

Sharfuddin, J.

1. The case was tried by Jury.
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2. We have heard the learned Vakil appearing for the appellant. He contends that there has been a misdirection in the charge, first, because in the charge-sheet the common object has not at all been mentioned and he relies on the cases of *Behari Mahton v. Queen-Empress*¹ *Sabir v. Queen-Empress*² There are, however, other cases which go to show that the omission to mention the common object in the charge-sheet does not necessarily vitiate the trial. The second ground urged by the learned Vakil is that in the charge to the Jury, the learned Sessions Judge has not drawn their attention to the case set up by the defence and that some of the witnesses who were present at the time of the alleged occurrence were not examined in the trial.
3. The learned Deputy Legal Remembrancer admits that the charge is inadequate.
4. The learned Sessions Judge should have drawn the attention of the Jury to those facts pointing out to them that non-production of those witnesses created a presumption under Section 114 of the Evidence Act which did not help the case for the prosecution.
5. Apart from these objections, I am of opinion that the charge to the Jury is most inadequate. In his charge the learned Judge nays: "The offences of rioting, culpable homicide, voluntarily causing grievous hurt and the provisions of Sections 34 and 149, Indian Penal Code, are explained." There is nothing to show that the Jury were told that a rioting can only take place when there is an unlawful assembly consisting of at least five men with one of the common objects mentioned in Section 141, Indian Penal Code. I am of opinion that in cases of riot it is essentially necessary to mention what an unlawful assembly is. The Jury are not experts in law. They might not be able to distinguish between a collection of five or more men without a common object and a collection of the same number of men with a common object.
6. In these circumstances, I think, the case should go back for re-trial. The conviction and sentence are set aside and a fresh trial is ordered.

7. I would like to point out that in the fresh trial it is desirable that the common object of the assembly, the case set up by the accused, the evidence, if any, either in cross examination of the witnesses for the prosecution or in the examination-in-chief of any defence witness, if examined and any statement corroborating the allegation of the accused, should be distinctly placed before the Jury.

8. The re-trial of the accused will be only under Section 147, Indian Penal Code, inasmuch as he has not been found guilty of any other offence.

9. Let the accused be admitted to bail to the satisfaction of the District Magistrate.

Chapman, J.

10. I agree.

Cases Referred.

111 C. 106

222 C. 276 and Poresh Nath Sircar v. Emperor 33 C. 295; 2 C.L.J. 516; 3 Cr. L.J. 153